

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 2865 – SB 3520

April 25, 2012

SUMMARY OF AMENDMENT (017468): Deletes all language after the enacting clause. Defines “eligible petitioner” as a person who was convicted of one of the following enumerated Class E felonies and sentenced to imprisonment for a term of three years or less for an offense committed on or after November 1, 1989: accessory after the fact; custodial interference where person not voluntarily returned by defendant; knowing dissemination of illegally recorded cellular communication; theft (\$501-\$999); forgery (up to \$1,000); criminal simulation (up to \$1,000); hindering secured creditors; fraud in insolvency; fraudulent use of credit card or debit card (\$501-\$999); worthless checks (\$501-\$999); destruction of valuable papers (\$501-\$999); destruction or concealment of will; fraudulent or false insurance claim (\$501-\$999); fraudulent qualifying for set aside programs (\$501-\$999); theft of trade secrets (\$501-\$999); sale of recorded live performances without consent (\$501-\$999); unauthorized solicitation for police, judicial or safety associations; fraudulent transfer of motor vehicle with value of less than \$20,000; communication theft (\$501-\$999 (fine only)); home improvement fraud (\$500-\$1,000); burglary of an auto; vandalism (\$501-\$999); utility service interruption or property damage; aggravated criminal littering (2nd and 3rd offenses involving certain weight or volume); violation of Tennessee Personal And Commercial Computer Act (\$501-\$999); unsolicited bulk electronic mail (\$500-\$999); taking telecommunication device into penal institution; impersonation of licensed professional; evading arrest in motor vehicle where no risk to bystanders; failure to appear (felony); gifts of adulterated candy or food; manufacture, delivery, sale or possession of Schedule V drug (fine not greater than \$5,000); manufacture, delivery, sale or possession of not less than one-half ounce and not more than 10 pounds of Schedule VI; drug marijuana (fine not greater than \$1,000); manufacture, delivery, sale or possession of Schedule VII drug (fine not greater than \$1,000); simple possession or casual exchange (3rd offense); selling glue for unlawful purpose; counterfeit controlled substance; or unlawful drug paraphernalia uses and activities.

Defines “eligible petitioner” as a person who was convicted of a misdemeanor offense committed on or after November 1, 1989, except for the following enumerated offenses: assault; aggravated assault of public employee; domestic assault; violation of protective or restraining order; possession of firearm while order of protection in effect; public indecency third or subsequent offense; indecent exposure (victim under 13 years of age) or by person in penal institution exposing to a guard; violation of community supervision by sex offender not constituting offense or constituting misdemeanor; soliciting minor to engage in Class E sexual offense; unlawful sexual contact by authority figure; fraudulent use of credit/debit card (up to \$500); reckless burning; aggravated criminal trespass of a habitation, hospital, or on the campus of any public or private school, or on railroad property; coercion — abortion; third or subsequent violation of “Child Rape Protection Act of 2006”; Child abuse (where child is between ages 7-17); child neglect and endangerment (where child is between ages 7-13);

enticing a child to purchase intoxicating liquor — purchasing alcoholic beverage for child; allow person 18-21 to consume alcohol on person's premises; harboring or hiding a runaway child; stalking; unlawful dispensing of immediate methamphetamine precursor, sale of meth precursor to person on methamphetamine registry or purchase by someone on registry, possess meth precursor with intent to sell to another for unlawful use, purchase meth precursor for another for unlawful use, purchase meth precursor at different times and places to circumvent limits, and use false ID to purchase meth precursor for purpose of circumventing limits; using substance or device to falsify drug test results and selling synthetic urine; possession of the hallucinogenic plant *Salvia Divinorum* or the synthetic cannabinoids; sale or possession of synthetic derivatives or analogues of methcathinone; importing, preparing, distributing, processing, or appearing in obscene material or A misdemeanors; unlawful exhibition of obscene material; sale or loan to minors of harmful materials; unlawful massage or exposure of erogenous areas; possession of firearm after being convicted of misdemeanor crime of domestic violence; possession of firearm while order of protection is in effect; possession of firearm while prohibited by state or federal law; failure of adult to report juvenile carrying gun in school; non-parent providing handgun to a juvenile; failure to surrender handgun carry permit upon suspension; violent felon owning or possessing vicious dog; assault (offensive or provocative physical contact); public indecency — first or second offense (punishable by \$500 fine only); indecent exposure (victim 13 years old or older); disseminating smoking paraphernalia to minor after three prior violations; misuse of official information by public servant; disorderly conduct at funerals; possession of or consuming alcoholic beverages on K-12 school premises; display for sale or rental of material harmful to minors; and driving under the influence of an intoxicant.

Also defines “eligible petitioner” as a person who was convicted of a felony or misdemeanor committed prior to November 1, 1989, if: the person was sentenced to a determinate sentence, of three years or less; the person was sentenced to an indeterminate sentence for which the person served three years or less; the person has never had a previous conviction expunged as the result of the successful completion of a diversion program pursuant to Tenn. Code Ann. §§ 40-15-102 through 40-15-106 or Tenn. Code Ann. § 40-35-313; and the offense for which the person was convicted: did not have as an element the use, attempted use, or threatened use of physical force against the person of another; did not involve, by its nature, a substantial risk that physical force against the person of another would be used in the course of committing the offense; did not involve the use or possession of a deadly weapon; was not a sex offense for which the offender is required to register as a sexual offender or violent sexual offender under Title 40, Chapter 39, Part 2; or any sex offense involving a minor; did not result in the death, serious bodily injury or bodily injury to a person; did not involve the use of alcohol or drugs and a motor vehicle; did not involve the sale or distribution of a Schedule I, II, III, or IV controlled substance; did not involve a minor as the victim of the offense; or did not result in causing the victim or victims to sustain a loss of \$25,000 or more.

Effective July 1, 2012, authorizes an eligible petitioner to file for expungement of his or her public record involving a criminal offense, if at the time of filing, the person has never been convicted of any criminal offense, including federal offenses and offenses committed in other states other than the offense committed for which the petition for expungement is filed; at least five years have elapsed since the completion of the sentence imposed for the offense; and the person has fulfilled all requirements of the sentence imposed by the court, including payment of

all fines, restitution, court costs and other assessments; completion of any term of imprisonment or probation; meeting all conditions of supervised or unsupervised release; and if so required by the conditions of the sentence imposed, remaining free from dependency on or abuse of alcohol or a controlled substance or other prohibited substance for a period of not less than one year.

Requires a person seeking expungement to petition the court in which the petitioner was convicted of the nonviolent offense for which the petition is filed. Upon filing, requires the clerk to serve it on the district attorney general (DAG) for that judicial district. Authorizes the DAG to submit recommendations to the court within 60 days after service of the petition. If the court denies the petition, the petitioner may not file another such petition until at least two years from the date of denial.

By September 1, 2012, requires the District Attorneys General Conference (DAGC) to create a simple form to allow a lay person to petition the court for expungement. Requires the DAG to prepare the petition and proposed order and provide it to the petitioner to be filed with the appropriate court clerk. Requires the district public defender of each judicial district to conduct at least one annual educational program to provide information and assistance with the general expungement process and the expungement process established by this legislation. Requires the District Public Defenders Conference to maintain a video of the educational program on the Conference's website, if available.

Requires the petitioner to pay the court clerk a fee of \$350 upon filing of the petition. Of each fee, the Tennessee Bureau of Investigation (TBI) will receive \$50 to defray the costs incurred from the additional expungement petitions filed and granted; and the court clerk shall retain \$10 of each fee and remit the remaining \$290 to the trustee to be allocated in the following manner: five percent to the newly created Public Defenders Expungement Fund (PDEF); 40 percent to the newly created District Attorneys Expungement Fund (DAEF) for FY12-13 and 45 percent for each subsequent fiscal year; and 55 percent to the state general fund for FY12-13 and 50 percent for each subsequent fiscal year. Requires the monies in the DAEF to be used to defray the expense incurred for the required record search and preparation of the petition and proposed order of expungement. Any remaining monies in the DAEF may be used for law enforcement purposes, including but not limited to, the hiring of expert witnesses, training, matching federal grants directly related to prosecutorial duties, purchasing equipment and supplies, travel, and salaries and salary supplements for DAGC support staff. Monies in the DAEF will not revert to the general fund but will be carried forward. Subjects all funds in the DAEF to an annual audit by the Comptroller of the Treasury. Requires the monies in the PDEF to be used to defray the expense incurred by conducting the annual educational activities required by this legislation. Subject to annual appropriation, any remaining monies in the DPEF may be used in the furtherance of the services and programs provided by public defenders for each judicial district. Monies in the PDEF will not revert to the general fund but will be carried forward.

Beginning July 1, 2013, requires the TBI to review the number of expungement petitions, the cost of processing each motion, and the amount of money paid in expungement fees to determine if the amount allotted to the Bureau is adequate, and if some portion of such funds could be used for other criminal justice purposes such as the Criminal Injuries Compensation Fund or drug court funding. Requires the Bureau to report its findings to the General Assembly in January 2014.

Specifies an order of expungement granted pursuant to this legislation has the legal effect of restoring the petitioner to the same status occupied before the arrest, indictment, information, trial and conviction. Expungement under this legislation means, in contemplation of law, the conviction for the expunged offense never occurred and the person shall not suffer any adverse affects or direct disabilities by virtue of the criminal offense that was expunged. Authorizes a person, whose petition is granted pursuant to this legislation and who is otherwise eligible under state or federal law to possess a firearm, to be eligible to purchase a firearm pursuant to Tenn. Code Ann. § 39-16-1316 and apply for and be granted a handgun carry permit pursuant to Tenn. Code Ann. § 39-17-1351. Specifies that records expunged pursuant to the proposed legislation are to be confidential and can only be used to enhance a sentence if the petitioner is subsequently charged and convicted of another crime.

CORRECTED FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures - \$4,900/One-Time
\$175,700/Recurring

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Increase State Revenue – Exceeds \$2,400,000/TBI

Exceeds \$700,000/Public Defenders Expungement Fund

Exceeds \$5,600,000/FY12-13/District Attorneys Expungement Fund

**Exceeds \$6,300,000/FY13-14 and Subsequent Years/District Attorneys
Expungement Fund**

Exceeds \$7,600,000/FY12-13/General Fund

Exceeds \$7,000,000/FY13-14 and Subsequent Years/General Fund

Increase State Expenditures - \$4,900/FY12-13/TBI

\$175,700/Recurring/TBI

Increase Local Revenue – Exceeds \$480,000

Increase Local Expenditures – Not Significant

Assumptions applied to amendment:

- According to information provided by the Administrative Office of the Courts (AOC), in the state courts, there were 23,964 criminal counts in FY10-11 disposed of as a conviction, guilty plea-as charged, or guilty plea-lesser charge and the offense was for the enumerated Class E felony and misdemeanor offenses.
- TBI assumes these 23,964 counts represent 25 percent of the total, excluding general sessions courts. Total counts, including general sessions courts, will result in 95,856 (23,964 x 4) additional expungement requests each year.

- Approximately 50 percent or 47,928 of the total offenders who will be eligible will pay the \$350 to have his or her record expunged resulting in an increase in revenue for state and local government.
- The court clerk will retain \$10 of each fee resulting in an increase in local revenue of at least \$479,280 (\$10 x 47,928 expungement requests). Any increase in workloads for the court clerks to collect the additional fee can be accommodated within existing resources.
- A total increase in state revenue of at least \$16,295,520 (\$340 x 47,928 expungement requests).
- Of the total revenue collected, TBI will receive at least \$2,396,400 (\$50 x 47,928 expungement requests). The remaining revenue collected, \$13,899,120 (\$16,295,520 - \$2,396,400), five percent or \$694,956 (\$13,899,120 x 5.0%) will be deposited in the Public Defenders Expungement Fund; 40 percent or \$5,559,648 (\$13,899,120 x 40%) in FY12-13 and 45 percent or \$6,254,604 (\$13,899,120 x 45%) in FY13-14 and subsequent years will be deposited in the District Attorneys Expungement Fund; and 55 percent or \$7,644,516 (\$13,899,120 x 55%) in FY12-13 and 50 percent or \$6,949,560 (\$13,899,120 x 50%) in FY13-14 and subsequent years will be deposited in the state general fund.
- According to the TBI, the Bureau will eventually require a total of 11 additional data processing operator positions; however, at this time, the TBI is only requesting five additional data processing operator positions to process the additional requests. The Bureau will pursue the additional six positions through the Expansion Request process when ample revenue has been collected. Each data processing operator would process 50 requests per day or 11,000 per year.
- An increase in state expenditures of \$175,675 reflects the salary (\$23,900), benefits (\$9,475), and other related supplies (\$1,760) for five additional positions.
- A one-time increase in expenditures of \$4,900 reflects office supplies (\$980) for each position.
- According to the DAGC, any increase in caseloads as a result of the proposed legislation can be handled within its current staffing. Any increase in costs for the DAGC to create the required form or to prepare the petition and order of expungement will be offset by the increase in revenue collected as a result of this legislation.
- Any increase in expenditures for the District Public Defenders Conference to provide the required annual training will be offset by the increase in revenue collected as a result of this legislation.
- The required annual audit of the funds in the District Attorneys Expungement Fund can be accommodated within the existing resources of the Office of the Comptroller of the Treasury.
- Any impact to the Department of Safety to handle the additional requests for handgun carry permits can be accommodated within existing resources without an increased appropriation or reduced reversion.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise". The signature is fluid and cursive, with the first name "Lucian" written in a larger, more prominent script than the last name "Geise".

Lucian D. Geise, Executive Director

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